

BEFORE THE
COUNTY OF SACRAMENTO
ENVIRONMENTAL MANAGEMENT DEPARTMENT
STATE OF CALIFORNIA

In the Matter of the Notice and Order
Pertaining to:

DIXON PIT LANDFILL

Super Pallet Recycling Corp., and
Five Star Auto And Towing, Inc.,

Appellants.

OAH No. 2008100665

DECISION

On January 5, March 23, May 11, May 12, May 13, May 27, and June 9, 2009, in Sacramento, California, Catherine B. Frink, Administrative Law Judge, Office of Administrative Hearings, heard this matter serving as a Hearing Officer pursuant to Public Resources Code section 44308.

John Reed, Deputy County Counsel, County of Sacramento, represented the County of Sacramento Environmental Management Department (EMD), State of California (County).

On January 5, 2009, Mark A. Pruner, Attorney at Law, represented appellant Super Pallet Recycling Corp. (Super Pallet). Jasmail Singh appeared without counsel and represented appellant Five Star Auto and Towing, Inc. (Five Star) (collectively, appellants).

At the hearing on March 23, 2009, Mr. Pruner withdrew as counsel in this matter, due to a conflict of interest. Thereafter, Donald M. Wanland, Jr., Attorney at Law, of Wanland & Spaulding, represented Five Star. Patrick T. Markham, Attorney at Law, of Jacobson Markham LLP, represented Super Pallet.

By order dated May 8, 2009, the Administrative Law Judge ruled that Five Star and Super Pallet are jointly responsible for compliance with the Notice and Order issued on September 3, 2008.¹

¹ A copy of the May 8, 2009 Order Re: Relevance of Issues was made part of the record as Exhibit U.

At the hearing on May 11, 2009, Mr. Wanland reiterated Five Star's contention that Super Pallet is solely responsible for compliance with the Notice and Order. Five Star declined to participate further in the hearing.

The evidentiary hearing concluded on June 9, 2009. The record was held open for the submission of briefs. The County's Post Hearing Brief was received on June 26, 2009, and was marked as Exhibit FF. Super Pallet's Closing Brief was received on July 13, 2009, and was marked as Exhibit 133. The County's Reply Brief was received on July 20, 2009, and was marked as Exhibit GG. The record was closed and the matter was submitted for decision on July 20, 2009.

ISSUES PRESENTED

1. Were corrective measures to the land fill gas (LFG) collection system to abate the gas violations at probe 10-2 completed by the compliance date of November 17, 2008?
2. Was the monitoring performed at probe 10-2 by B. J. Bergmann on November 16, 2008 the "official" weekly monitoring event, and not an "informal monitoring?"
3. Was probe 10-2 in compliance with applicable standards set forth in California Code of Regulations, title 27 (27 CCR), by November 16, 2008, without the two new LFG extraction wells (IGE 7 and IGE 8) being operational?
4. Were IGE 7 and IGE 8 both complete by December 1, 2008?
5. With the LFG collection system (pipe) remedies fully connected, is sustained compliance with applicable standards at probe 10-2 dependent on the reliability and operational efficiency of the flare (i.e., without LFG extraction wells IGE 7 and IGE 8 being operational)? Are the new extraction wells needed?

FACTUAL FINDINGS

Jurisdiction of the EMD

1. The County EMD is a local enforcement agency (LEA) for the State of California Integrated Waste Management Board (CIWMB).
2. The Public Resources Code (PRC), Division 30, governs the regulation of waste management in California. EMD, as a LEA, is authorized by PRC section 43209 and California Code of Regulations, title 14 (14 CCR), sections 18051 and 18084 as the enforcement agency for Solid Waste Code Enforcement in the County. Pursuant to PRC sections 45000, 45005, and 45011, the LEA is further authorized to order solid waste facility owners and/or operators who

are in violation of applicable statutes, regulations, or any corrective action or cease and desist order, and/or whose facility or operation poses a potential or actual threat to public health and safety or the environment, to cease and desist any improper action, to correct the violations, and/or to abate the threat, according to a time schedule established by the LEA.

Regulatory Requirements – LFG Monitoring

3. Pursuant to 27 CCR section 20919, when the LEA “has sufficient relevant information to believe a hazard or nuisance is being or may be created by landfill gas, it shall notify the operator.... Thereafter, as directed by the [LEA]... the site operator shall cause the site to be monitored for the presence and movement of landfill gas, and shall take necessary action to control such gas....” Such “necessary action” may include the construction of a gas control system.

4. 27 CCR section 20920 states, in pertinent part, that 27 CCR sections 20921 through 20939 “set forth the performance standards and the minimum substantive requirements for landfill gas monitoring and control as it relates to active solid waste disposal sites and to proper closure, postclosure maintenance and ultimate reuse of solid waste disposal sites to assure that public health and safety and the environment are protected from pollution due to the disposal of solid waste.” 27 CCR section 20921, subdivisions (b) and (c), pertain to the development of a gas monitoring and control program by the operator, to be approved by the LEA and CIWMB.

5. 27 CCR section 20921, subdivision (a)(2), states:

(a) To provide for the protection of public health and safety and the environment, the operator **shall** ensure that landfill gas generated at a disposal site is controlled in such a manner as to satisfy the following requirements: [¶]

(2) The concentration of methane gas migrating from the disposal site **must not exceed 5% by volume in air at the disposal site permitted facility boundary** or an alternative boundary approved in accordance with §20925.

Emphasis supplied.

Background

6. The Dixon Pit Landfill, located at 8973 Elk Grove-Florin Road, APN 127-0010-062-000, is a “closed disposal site” pursuant to PRC section 40115.5. Super Pallet owned the Dixon Pit Landfill until June of 2006, when it was sold to Five Star.² The landfill

² In a letter dated December 28, 2007, from Jasmail Singh, as president of Dixon Land Company, Inc., to Lisa Todd, Supervising Environmental Specialist for EMD, Mr. Singh asserted that, “Dixon Land Company, Inc. is

was certified as closed on July 2, 2007, pursuant to an approved Final Closure and Post Closure Maintenance Plan. Super Pallet is designated as the operator of Dixon Pit Landfill on the facility's Solid Waste Facility Permit (SWFP) No. 34-AA-0007, issued on July 2, 2007, and Five Star is designated as the owner.³ Super Pallet will remain the facility operator unless a new facility operator establishes financial assurances through the CIWMB. Gyan Kalwani is the president of Super Pallet.

7. AES North, Inc. is the design engineer for the Final Closure and Post Closure Maintenance Plan. As part of the Final Closure and Post Closure Maintenance Plan, AES North prepared an LFG Monitoring Plan for the facility. B. J. Bergmann, a registered professional engineer, is the engineer responsible for developing and overseeing the implementation of the LFG Monitoring Plan.

8. The LFG control system at the Dixon Pit Landfill has three parts: The network of gas extraction wells to pull methane gas out of the ground; collection piping to move the methane gas to the flare; and the flare, which disposes of the methane gas by burning it. The efficacy of the LFG control system in meeting the 27 CCR standard for perimeter subsurface methane concentration is measured by 10 sets of three probes each (30 total probes), located near the perimeter for testing the subsurface methane gas concentration.

9. The facility has a history of violations including failure to maintain the gas control system to prevent the methane gas concentration detected at perimeter monitoring probes from exceeding the regulatory limit of 5 percent methane by volume of air. On May 15, 2006, the County issued a Notice and Order to Super Pallet, as the then-owner and operator of the Dixon Pit Landfill, in which the LEA found, among other violations, that Super Pallet had failed to comply with the requirements of 27 CCR section 20921 for gas monitoring during closure and post closure. Super Pallet was required to "amend its LFG Monitoring Plan to include: landfill gas monitoring procedures that meet the CIWMB standards included in Attachment #2; Procedures to be followed when regulatory limits for landfill gas have been exceeded, to include the requirement for 24 hour LEA notification and increased weekly monitoring frequency; and Procedures for monitoring and reporting of gas extraction system operations, including identifying system failures." Super Pallet was further required to "Follow the standards for landfill gas monitoring in Attachment 2" on an "ongoing" basis. Super Pallet was found to be in violation of 27 CCR section 20937, Reporting and Control of Excessive Gas Concentrations. Super Pallet was required to "Submit to the satisfaction of the LEA, a time schedule that identifies all milestones

the property owner of APN 027-0010-062-000. The [December 14, 2007] Notice and Order incorrectly identifies Five Star Auto and Towing, Inc. as being associated with property ownership."

³ PRC section 40160 states: "'Operator' means a person who operates a solid waste facility or operates a disposal site." PRC section 40162 states: "'Owner' means a person who holds fee title to, or a leasehold or other possessory interest in, real property that is presently in use as a solid waste facility or is a disposal site."

necessary to control landfill gas at the perimeter boundary at all times.” Super Pallet was further required to “Achieve and maintain control at the perimeter boundary.”

10. On January 18, 2007, the County issued a Penalty Order against Dixon Pit Landfill for failure to comply with the May 15, 2006 Notice and Order, after inspections and gas monitoring conducted by the LEA on December 4, 2006, and January 3, 2007, documented that Super Pallet failed to achieve and maintain control of explosive gasses at the perimeter boundary by the deadline in the May 15, 2006 Notice and Order. In May of 2007, the County and Super Pallet entered into Settlement Agreement to resolve issues raised by the May 15, 2006 Notice and Order, and the January 18, 2007 Penalty Order. As part of the settlement, Super Pallet acknowledged that it had “failed to follow the standards for landfill gas monitoring in Attachment 2 of the May 15, 2006 Notice and Order on an ongoing basis. Super Pallet agreed to “submit a signed statement certifying that landfill gas monitoring standards are being followed and that [Super Pallet] will continue to do so. Submit receipts for rental of the GEM500 gas meter.” Super Pallet agreed to develop and submit to EMD a work plan to achieve and maintain control of explosive gasses at the site perimeter boundary, and to pay a \$55,108 fine.

11. On September 13, 2007, Wendy Hoffspiegel, an Environmental Specialist with the County EMD, sent an email to Kenneth Holder, Vice President of Super Pallet; Jasmail Singh, President of Five Star; and B. J. Bergmann, of AES North, Inc., requesting to meet with them on September 24, 2007, in the EMD offices “to discuss current violations at the Dixon Pit Landfill and abatement strategies.” Mr. Singh responded in a letter dated September 18, 2007, in which he (along with Mr. Bergmann and Mr. Holder) declined the meeting request by the LEA. Mr. Singh stated, “Rather than a meeting, I feel it would be more productive that we instead submit an engineered remedy for the non-compliant methane concentrations as have been detected by your agency in probe set LFG 10-2. Our proposal to this end is detailed below, along with a proposed schedule.” The letter further stated:

Based upon recommendations to us by our engineer [AES North, Inc.], Five Star Auto and Towing Inc. and Dixon Land Company, Inc. proposes [sic] the following steps to address the LEA’s allegation of non-compliant methane concentrations within LFG Probe set LFG-10-2:

- 1) We will expand the infill LFG Extraction network along the east property line of the closed landfill. We have retained AES North to provide design services for this task. Based on preliminary work by the engineer, AES North has tentatively suggested two shallow low flow extraction wells be installed parallel to the east property line. Five Star Auto and Dixon Land Company will fund the construction of these LFG extraction wells from our operating capital.

- 2) A plan set, detailing the location and construction of these new LFG extraction wells will be prepared and submitted to Sacramento County EMD, California Integrated Waste Management Board, and the RWQCB for review prior to construction. Per Mr. Bergmann's recent informal discussions with Mr. Yekta on this matter, this will be a free-standing plan set, and will not be integrated into the governing document until as-built of the wells has been completed [sic]. The Post Closure Maintenance Plan will be amended to integrate the new extraction wells after well construction is completed. This plan will be submitted on or before 01 October 2007.
- 3) The new LFG extraction wells will be attempted to be constructed and operational within 30 days of agency approval. Two additional extraction wells are within the 1997 [design] capacity contingency of the LFG collection system, so the piping required to connect these wells will be minimal. As we understand, Mr. Bergmann, with approximately 15 years of experience with the design of LFG monitoring and control systems, has slightly more background with these matters than agencies who will be reviewing the design. Accordingly, we trust that agency approval of the extraction well network expansion proposal can be provided expeditiously, so that we do not again end up attempting to install extraction wells atop final cover during the wet season.

12. In a letter dated October 25, 2007, Mr. Singh proposed additional measures to abate the gas violation at probe 10-2, including leveling and alignment of the gas collection pipe system, and bedding the pipe system with topsoil where it was sagging. He further stated that, "if compliance is still not achieved by all these efforts, then we will move on to the installation of the additional infill extraction wells as has been recommended by our engineer."

13. Pursuant to the facility's LFG Monitoring Plan, Section IV.B.1., monitoring of subsurface perimeter probe set LFG-10 "will be conducted on a monthly basis during the summer, fall, and winter (between June and February) and on a twice monthly basis in the spring (during the months of March, April, and May) when methane gas generation and migration potential is highest." However, for any subsurface probe set where an "*Action Concentration*" (greater than 5 percent methane by volume) is detected in any subsurface probe, monitoring frequency for the subsurface probe set within which the non-compliant

methane concentration was detected will be accelerated to weekly, or to more frequent basis if not unreasonably requested by the LEA, or if otherwise deemed to be warranted."

14. On November 27, 2007, a joint inspection was performed by Brion McGinness, an Environmental Specialist with the County EMD, and Gino Yekta, Waste Management Engineer with CIWMB, to conduct gas monitoring of probe set LFG-10. Mr. Singh was present during the inspection. The facility was found to be in violation of 27 CCR sections 20921 and 20937, due to the fact that methane readings in gas probe 10-2 exceeded the 5 percent regulatory limit; the methane levels were measured at 5.8 percent by the LEA, and 6.6 percent by CIWMB.

15. On December 27, 2007, Mr. McGinness conducted an inspection of the facility and performed gas monitoring of probe set LFG-10. Mr. Singh was present, as was James Emslander, an employee of Five Star who was responsible for conducting gas monitoring at the facility. The facility was found to be in violation of 27 CCR sections 20921 and 20937, due to the fact that methane readings in gas probe 10-2 exceeded the 5 percent regulatory limit; the methane levels were measured at 5.5 percent by the LEA. Mr. Emslander confirmed that the site had begun weekly monitoring of probe set LFG-10, as required by the LFG Monitoring Plan.

16. On December 28, 2007, Five Star submitted plans for the installation of the two proposed gas extraction wells to the LEA, CIWMB, and the Regional Water Quality Control Board (RWQCB). The plans were approved by the LEA on January 3, 2008 and the RWQCB on January 7, 2008. CIWMB approved the plans on February 7, 2008.

17. For the year 2007, the LEA obtained methane gas readings from probe 12-2 as follows:

January 3	10.3%
February 23	7.9%
March 26	10.1%
April 24	0.0%
May 29	8.3%
June 26	9.4%
July 27	7.0%
August 9	9.6%
August 21	8.8%
September 26	8.8%
October 2	7.2%
November 27	5.8%
December 27	5.5%

Except for April 24, 2007, all monthly measurements by the LEA in 2007 exceeded the 5 percent regulatory limit of methane by volume of air.

18. Mr. McGinness conducted inspections of the facility on January 30, 2008; February 27, 2008; and March 17, 2008. On each occasion, Mr. McGinness performed gas monitoring at probe set LFG-10, and gas probe 10-2 was found to be in compliance with applicable regulations. However, Mr. McGinness's February 27, 2008 Inspection Report stated: "Gas probe 10-2 has been in violation since May 29, 2007....Because the probe was in violation for 8 consecutive months, gas control remains an area of concern....Until further notice, the operator must continue to submit weekly monitoring results to the LEA."

19. On April 7, 2008, Sharon Zimmerman, an Environmental Specialist with the County EMD, conducted a quarterly inspection at the facility. Ms. Zimmerman performed gas monitoring at probe set LFG-10, and gas probe 10-2 was found to be in compliance with applicable regulations. However, her Inspection Report noted that, "gas monitoring reports for the week of 4/18/08 and 4/25/08 on 10-2 have not been received."

Methane, Gas Control, and Monitoring History

20. Ms. Zimmerman and Mr. Yekta conducted a focused inspection of gas probe sets LFG-9 and LFG-10 on May 1, 2008. In her Inspection Report, Ms. Zimmerman noted that "Today's gas monitoring of probe 10-2 was impossible because the valve on probe 10-2 was found open. Valves must be kept completely closed between monitoring events to prevent venting and in order to obtain accurate readings." Prior to her departure from the site, Mr. Emslander informed Ms. Zimmerman that "the gas monitoring equipment was in the 'shop' for calibration." Ms. Zimmerman noted that the facility was required to comply with a directive from the LEA to perform weekly monitoring of probe 10-2, and that the facility must make arrangements in advance to rent the necessary equipment to perform the weekly monitoring. The report further noted that "the operator has failed to submit weekly monitoring reports for probe 10-2. The last report received was dated 4/11/08. Gas monitoring reports were not received for the weeks of 4/18/08 and 4/25/08. Submit this data immediately."

21. Ms. Zimmerman conducted a focused inspection of gas probe set LFG-10 on May 8, 2008. The methane gas reading at probe 10-2 was 5.5 percent, which exceeded the 5 percent regulatory limit. In her Inspection Report, Ms. Zimmerman noted the violation of 27 CCR 20921, and stated that "the operator must add additional landfill gas controls to ensure that the concentration of methane remains below 5% by volume in air. The operator must also continue to submit weekly monitoring results to the LEA."

22. Ms. Zimmerman and Mr. Yekta conducted a focused inspection of gas probe sets LFG-1 and LFG-10 on May 14, 2008. Mr. Emslander was also present. Ms. Zimmerman and Mr. Emslander monitored gas probe set #10 concurrently, with their instruments connected by a "tee" in order to compare results; Mr. Yekta monitored the gas probes separately. The gas readings taken by the LEA and CIWMB were consistent with the

gas readings obtained by Mr. Emslander. Ms. Zimmerman's Inspection Report states, in part:

All gas monitoring results at probe 10 and probe 1 were within the regulatory limit of 5% methane by volume in air. Gas probe 10-2 was monitored at 11:38 am. LEA and CIWMB staff questions [sic] the reliability of the data for probe 10-2 because Mr. Emslander had conducted gas monitoring of probe 10-2 at approximately 9:30 am in the morning before LEA and CIWMB staff arrived on site.

23. Ms. Zimmerman conducted inspections of the facility on June 19, 2008, and July 14, 2008, with Mr. Emslander present. On each occasion, the facility was found to be in violation of 27 CCR sections 20921 and 20937, due to the fact that methane readings at gas probe 10-2 exceeded the 5 percent regulatory limit; the methane levels were measured at 5.8 percent on June 19, 2008, and at 6.6 percent on July 14, 2008. Ms. Zimmerman's Inspection Reports for both dates reiterated the fact that weekly monitoring of probe set LFG-10 was required. Her July 14, 2009 Inspection Report noted that, "Gas probe 10-2 was not monitored for weeks 4/18/08; 4/25/08; 5/1/08; 6/13/08; and 6/27/08."

24. Ms. Zimmerman and Mr. Yekta conducted a focused joint inspection of the facility on August 25, 2008. The facility was found to be in violation of 27 CCR sections 20921 and 20937, due to the fact that methane readings at gas probe 10-2 exceeded the 5 percent regulatory limit; the methane level was measured at 6.5 percent. With respect to the violation of 27 CCR section 20937, Ms. Zimmerman's Inspection Report stated, "The operator must notify the LEA with in seven (7) days of detection of excessive landfill gas concentrations and describe corrective actions to be taken to protect public health and safety and the environment. The operator must modify the gas control system to include the installation of the two (2) approved new infill gas extraction wells to control gas at the permitted boundary of the landfill and have these new wells be operational."

25. Mr. Emslander submitted weekly gas monitoring data for probe 10-2 for July, August, and September 2008, as follows:

July 2	4.8%
July 10	5.4%
July 18	6.1%
July 25	5.9%
August 1	6.0%
August 8	5.5%
August 15	8.1%
August 21	7.0%
August 29	6.4%
September 5	7.6%

September 12	6.4%
September 19	6.6%
September 26	7.5%

Except for July 2, 2008, all measurements in July, August, and September 2008 exceeded the 5 percent regulatory limit of methane by volume of air.

26. On September 26, 2008, Mr. Bergmann sent an e-mail to Ms. Zimmerman, with copies to Mr. Singh and Mr. Kalwani, in which he transmitted a copy of the most recent quote for installation of the two LFG extraction wells (IGE 7 and IGE 8) at Dixon Pit Landfill. The total estimated cost, including the associated collection system expansion, was \$18,130. Mr. Bergmann's e-mail further stated:

As we have previously advised Five Star and Super Pallet, in our opinion, the solution for obtaining sustained compliant methane concentration in Probe LFG 10-2 is NOT the installation of these two new LFG extraction wells. Our design for IGE-5 and IGE-6 was based on a 99+% probability that methane control will be achieved at the property boundary by IGE-5 and IGE-6.

Installing IGE-7 and IGE-8 will raise this probability by one order of magnitude.

The design for IGE-7 and IGE-8 was submitted to EMD in order to satisfy a prescriptive mandate of a prior [Notice and Order] issued by EMD without prior consultation by the design engineer. "More extraction wells" is not, in our opinion, the solution to the periodic perimeter subsurface methane compliance problem in LFG 10-2.

These design probabilities ASSUME that the LFG collection and control systems HAVE been constructed as they were designed. Please see page 2 of Five Star's October 2007 letter to your agency. Also please see Note #5 on Sheet 2 of the LFG collection system design plan Rev B (04-27-2005), Rev C (07-31-2006), Rev D (11-28-2006), and Rev E (10-01-2007).

If the LFG collection system pipe is not brought to the design configuration, then the overall LFG collection and control systems will not function as designed. It will not matter how many new LFG extraction wells are installed.

The functioning of an LFG extraction wellfield (the network of extraction wells), as designed, is subordinate to the LFG collection system (the pipes and valves) and the LFG control system (in this case, the flare) BOTH functioning, as they were designed.

The costs to remedy the LFG collection and control systems so they function as they were designed, are less than the estimated costs of installing these two additional extraction wells.

The existing LFG extraction wells, and any additional LFG extraction wells will NOT function to their design probabilities UNTIL the rest of the system is remedied to its design configuration. In and of themselves, the additional extraction wells will not remedy the methane compliance problem in probe set LFG 10-2.

September 30, 2008 Notice and Order

27. On September 30, 2008, the County issued a Notice and Order to Dixon Pit Landfill, pursuant to PRC section 45000, and 14 CCR section 18304. As a consequence of the facts set forth in Finding 6, the County issued the September 30, 2008 Notice and Order to both the operator of record, Super Pallet, and the facility owner, Five Star.

28. Based upon the violations noted by Ms. Zimmerman in her Inspection Reports dated May 8, June 19, July 14, and August 25, 2008, and the weekly gas monitoring data for probe 10-2 submitted by the facility between July 10, 2008 and September 26, 2008, the LEA determined that Super Pallet and Five Star had "repeatedly failed to control methane gas at the property boundary at or below the regulatory limit of 5% methane by volume of air," and had "violated and continues to violate the following regulatory requirements: 27 CCR 20921, Gas Monitoring and Control; and 27 CCR 20937, Reporting and Control of Excessive Gas Concentrations."

29. As a consequence of these violations, the LEA ordered Super Pallet and Five Star to take specific actions, as set forth in a compliance table:

Violation	Requirements	Compliance Date
27 CCR 20921 Gas Monitoring and Control	1. The methane gas concentration at gas probe 10-2 and all other perimeter probes must be continuously controlled so as not to exceed the regulatory limit of 5 percent methane by volume in air.	1. Immediately and continuously.

27 CCR 20931 Reporting and Control of Excessive gas Concentrations	2. Implement the approved plans for the installation of two new infill gas extraction wells to control gas at the permitted boundary of the landfill and have both wells be operational. (Notify LEA staff at least seventy two (72) hours prior to installation of the extraction wells).	2. By November 17, 2008.
	2.1 In addition, implement any other corrective measures to the gas collection system necessary to abate the gas violation at probe 10-2.	2.1 By November 17, 2008.

30. The LEA required additional actions pertaining to the use of specific equipment to measure methane gas emissions at the perimeter probes. The LEA also specified that Super Pallet and Five Star "continue to monitor gas probe 10-2 weekly until approval has been received in writing from the LEA to reduce monitoring frequency, based upon the LEA's determination that gas control has been achieved and is considered reliable." The LEA required the amendment of the LFG Monitoring Plan to state that, "when required to increase the monitoring frequency to weekly, the operator will submit the monitoring data to the LEA by either general mail or electronically within five (5) days of the monitoring event."

31. The Notice and Order stated that Super Pallet and/or Five Star could appeal the violations by submitting a completed Notice of Defense along with a written statement providing the reasons why they should not be subject to the enforcement action, to be postmarked within 15 days of receipt of the Notice and Order. The Notice and Order, together with blank form Notices of Defense, were personally served by hand delivery on Mr. Singh and Mr. Kalwani on September 30, 2008.

32. On October 15, 2008, Mr. Pruner filed Notices of Defense on behalf of Five Star and Super Pallet. In each case, Mr. Pruner hand-wrote on the Notice of Defense: "Statement of Issues: EMD cited wrong facts and wrong law."⁴

Actions Subsequent to the Filing of the Notice and Order

33. On October 21, 2008, Ms. Zimmerman conducted a quarterly inspection at the facility. Ms. Zimmerman performed gas monitoring at probe sets LFG-10 and LFG-1. The facility was found to be in violation of 27 CCR sections 20921 and 20937, due to the fact

⁴ At the January 5, 2009 hearing, the County objected to the "Statement of Issues" filed by appellants, contending that it did not provide adequate notice of the issues in dispute. Appellants asserted that the County had been advised of appellants' objections to the Notice and Order through e-mails from Mr. Bergmann to Ms. Zimmerman, dated September 26, 2008 (Finding 26), December 9, 2008 (Finding 36), and December 22, 2008 (Finding 38). After a review by the Administrative Law Judge, the issues on appeal were limited to those set forth in the "Issues Presented."

that methane readings at gas probe 10-2 exceeded the 5 percent regulatory limit; the methane levels were measured at 6.3 percent. Mr. Emslander and/or other staff of Five Star performed methane gas monitoring at probe 10-2, with the following results:

October 3, 2008	8.7%
October 11, 2008	7.2%
October 17, 2008	6.6%
November 11, 2008	6.0%

No reports were filed for the weeks of October 24, October 31, and November 7, 2008.

34. Notwithstanding the appeal of the Notice and Order, Five Star undertook steps to modify the LFG control system at Dixon Pit Landfill. According to Mr. Bergmann, the gravel road at the north and west perimeter of the landfill was graded to provide a constant slope, thereby preventing water collection that could block the collection pipes in that area; the infill pipes to IGE 5 and IGE 6 were supported and protected from ultraviolet radiation; temporary pipe hookups to the perimeter were redesigned to connect to the infill pipe; all laterals were replaced on each well, with pipe of the proper size; new gauges were installed on the well heads; the west pipe was completely replaced (approximately 1700 feet) and new expansion joints were installed; and the ground surface was re-graded and sloped. In addition, the road crossings were brought to the correct grade. After the repairs were made to the collection system, the flare computer was recalibrated. Mr. Bergmann inspected the facility on November 16, 2008, and confirmed that the collection system had been repaired, and that the flare was operational. He performed gas monitoring at probe 10-2, and obtained a reading of 0.0 percent. Mr. Bergmann provided the monitoring results to Five Star for reporting to the LEA.

35. In an e-mail message from Mr. Bergmann to Ms. Zimmerman, Mr. Kalwani, and Mr. Singh, dated November 17, 2008, Mr. Bergmann stated, in part:

The primary LFG collection system remedy necessary to correct this system to our engineered design was in service as of mid-afternoon on 15 November 2008....

As of [sic] our monitoring of Probe Set LFG-10, conducted by AES North during the afternoon of 11-16-2008, while extraction well drillers were idle, Probe LFG 10-2 was IN COMPLIANCE with 27 CCR Standard. Compliance of Probe LFG 10-2 was achieved within 24 hours of the remedies to the LFG collection system being placed in service. [¶]

The LFG collection system remedies, as had been recommended by AES North as the solution to the chronic compliance

problems with monitoring Probe LFG 10-2, have also improved the performance of the LFG Flare, and should substantially improve the control system reliability.

However, due to extreme difficulties with drilling, LFG extraction well IGE-7 is drilled, but it has not been cased. LFG extraction well IGE-8 is drilled and cased, with plumbing of the well head scheduled for today. [¶]

Notwithstanding the completion of these extraction wells, the solution for obtaining sustained compliant methane concentrations in probe LFG 10-2 WAS NOT the installation of these two new LFG extraction wells, as we had advised in our 26 September correspondence to your agency (prior to issuance of the 30 September 2008 Notice and Order issued by Sacramento EMD). Rather, the solution was the LFG collection system construction remedies placed in service on 15 November 2008. [¶]

36. On November 25, 2008, Ms. Zimmerman conducted a focused inspection of gas probe 10-2. Mr. Emslander was present, as were other personnel of Five Star. Gas monitoring of probe 10-2 was conducted simultaneously by the LEA and Mr. Emslander, using two separate Gem 2000 gas monitoring meters and a connecting tee. The methane gas readings at probe 10-2 were 6.4 percent (LEA) and 6.3 percent (Five Star), which exceeded the 5 percent regulatory limit. Ms. Zimmerman Inspection Report noted violations of 27 CCR sections 20921 and 20937. Ms. Zimmerman further noted that one infill gas extraction well had been installed but was not operational. The second infill gas extraction well had been partially drilled as of the date of inspection. The flare was not running during the inspection. Ms. Zimmerman observed that "it attempted to start but immediately shut down. Mr. Emslander stated that 'the flare has been having trouble starting.'"

37. Mr. Bergmann sent an e-mail to Ms. Zimmerman, dated December 9, 2008, which responded to some of the issues raised in Ms. Zimmerman's November 25, 2008 Inspection Report. Mr. Bergmann noted that the LFG flare had been "down," i.e., non-operational, since November 23, 2008, and that Mr. Emslander had been performing maintenance on the flare, as recommended by AES North, Inc. According to Mr. Bergmann, the LFG flare "had been running 24-7 since the 11-15-2008 re-start with the collection pipe corrections, with only one other period of downtime on 11-21-2008 (about 8 to 10 hours)...Probe LFG 10-2 held compliance on 11-21-2008, even after this downtime." Mr. Bergmann stated that, "the solution to solve the probe LFG 10-2 compliance problem was to correct the collection system, and to perform maintenance and adjustments to maximize flare control systems that have been problematic." Mr. Bergmann asserted that "the collection system (with the corrected piping) controls LFG 10-2 to zero LEL within 24 hours. And this probe can remain in compliance for a 'reasonable' period of time (8 to 10 hours),

corresponding to reasonably anticipated routine LFG flare downtime (as was demonstrated on 11-21-2008)."

According to Mr. Bergmann, the two new extraction wells (IGE-7 and IGE-8) were completed as of December 1, 2008. Mr. Bergmann reiterated his belief that the two new wells were not needed, and "we have recommended that they not be used at the present time (they are operational, but will not be operated)."

38. Mr. Emslander and/or other staff of Five Star performed methane gas monitoring at probe 10-2 in December of 2008 with the following results:

December 4	7.7%
December 11	6.5%
December 18	1.2%
December 26	3.9%

39. In a subsequent email from Mr. Bergmann to Ms. Zimmerman, dated December 22, 2008, Mr. Bergmann objected to the statement in Ms. Zimmerman's November 25, 2008 Inspection Report that "corrective measures to the gas collection system to abate the gas violations at Probe 10-2 were not completed by the compliance date of 11-17-2008." According to Mr. Bergmann, he personally inspected the LFG collection system (i.e., piping) on November 16, 2008, and confirmed that "the LFG collection system construction remedies (to the engineered design)...had been completed on 15 November 2008. He further stated:

Most important, but not mentioned within the 11-25-2008 inspection report page 2 narrative on 'ENFORCEMENT ORDER STATUS,' IS THAT, BY 11-16-2008, Probe 10-2 was in compliance with the 27 CCR standard, WITHOUT the two new LFG extraction wells (IGE-7 and IGE-8) being operational. [¶]

As I have stated, in September 2008 and prior,... [w]ith the LFG collection system (pipe) remedies now fully constructed, sustained compliance of Probe LFG 10-2 is dependent on the reliability and operational efficiency of the LFG flare. [¶]

The collection system remedies were the solution to the compliance condition of Probe 10-2, as has been predicted by our engineered design of this system. [¶]

40. On December 22, 2008, Ms. Zimmerman conducted a focused inspection at the facility. Mr. Emslander was present, as was Victoria Krohn, from the County EMD. Gas monitoring of probe 10-2 was conducted simultaneously by the LEA and Mr. Emslander,

using two separate Gem 2000 gas monitoring meters and a connecting tee. Gas probe 10-2 was found to be in compliance with applicable regulations, with methane measured at 4.1 percent by the LEA, and 4.0 percent by Five Star.

41. Ms. Zimmerman conducted a focused inspection of gas probe set LFG-10 on January 28, 2009. The methane gas reading at probe 10-2 was 5.6 percent, which exceeded the 5 percent regulatory limit. Mr. Emslander arrived during testing, and Ms. Zimmerman discussed the results with him, including the fact that the facility was in violation of 27 CCR. In her Inspection Report, Ms. Zimmerman noted the violation of 27 CCR section 20921, and directed the site owner/operator to implement an approved remediation plan within 60 days of the date of the Inspection Report, in accordance with 27 CCR section 20937, subdivision (a)(3). The owner/operator was also directed to conduct LFG monitoring of probe 10-2 daily, and submit the results to the LEA at least weekly, in accordance with 27 CCR section 20933, beginning no later than February 9, 2009.

42. On February 11, 2009, Ms. Zimmerman conducted a focused inspection at the facility. She was accompanied by Patrice Webb, an Environmental Specialist with the County EMD, and by D. Owen, from CIWMB. Mr. Emslander was also present. The methane gas reading at probe 10-2 was 6.2 percent, which exceeded the 5 percent regulatory limit. Ms. Zimmerman noted the violation of 27 CCR section 20921 in her Inspection Report.

43. On March 10, 2009, Ms. Zimmerman conducted a quarterly inspection at the facility. She was accompanied by Ms. Webb, and by D. Owen, from CIWMB. Mr. Emslander was also present. LFG monitoring at probe 10-2 was found to be in compliance with applicable regulations, with methane measured at 2.2 percent.

44. In accordance with the directives of the LEA, Mr. Emslander and/or other staff of Five Star performed methane gas monitoring at probe 10-2 on January 8, 16, 24, and 30, 2009, and on February 7, 2009; thereafter, gas monitoring was performed daily.⁵ The methane levels at probe 10-2 exceeded 5.0 percent, in violation of 27 CCR section 20921, on the following dates between January 8, 2009, and April 28, 2009:

January 30	5.9%
February 7	7.4%

⁵ Considerable evidence was presented at hearing concerning the manner in which Mr. Emslander and other Five Star employees conducted methane gas monitoring at probe 10-2. Except on those occasions when he took measurements concurrently with LEA personnel, Mr. Emslander followed the procedure for subsurface probe monitoring set forth in the approved LFG Monitoring Plan for Dixon Pit Landfill. When LEA personnel were on-site to perform inspections and conduct methane gas monitoring at probe 10-2, they used the protocol developed by CIWMB, entitled "Landfill Gas Screening Procedures." The County contended that the CIWMB protocol is binding on appellants as a result of the May 22, 2007 Settlement Agreement between Super Pallet and the County, which incorporated by reference the CIWMB standards for landfill gas monitoring referenced as Attachment 2 to the May 15, 2006 Notice and Order issued to Dixon Pit Landfill. This matter is not raised in the September 30, 2008 Notice and Order, and is not an issue identified for appeal.

February 9	5.3%
February 13	6.1%
February 14	6.7%
February 15	6.7%
February 16	8.0%
February 17	5.1%
February 21	6.0%
February 22	6.5%
February 23	6.4%
March 2	7.3%
March 3	5.4%
March 22	5.2%
March 28	5.7%

45. Mr. Bergmann wrote a letter to Ms. Zimmerman, dated March 20, 2009, which offered a number of explanations for the non-compliant methane gas readings after January 2009. Mr. Bergmann attributed excessive readings on February 7, 2009 to extended flare system downtime for electrical service work on February 5-6, 2009; February 9, 2009 due to a leak in the LFG collection pipe; he attributed noncompliance on February 21, 22, and 23, 2009, and on March 2 and 3, 2009, due to "barometric pressure change influences."

Mr. Bergmann stated the two new infill gas extraction wells were unnecessary, and that the problems with probe 10-2 can be remedied (i.e., sustained compliance of LFG monitoring probe 10-2 can be achieved) with corrections to the LFG collection system (pipes and valves) remedied to design configurations (namely, the piping system to infill LFG extraction wells IGE-1 through IGE-6). Mr. Bergmann asserted that, "the second part of the solution for sustained compliance of Probe 10-2 was, and remains, to have the control system (the LFG flare) function as designed. This requires adequate flare system reliability, adequate operational efficiency, and an operation schedule which closely matches the daily LFG control extraction rate to the daily landfill methane production rate." Mr. Bergmann lists tasks that have been undertaken to optimize LFG flare system performance, reliability and operational efficiency, and recommendations for additional changes.

46. In his March 20, 2009 letter, Mr. Bergmann minimized the seriousness of the methane gas control problem. In his opinion, "the 27 CCR compliance challenge with this probe [10-2] is periodic—it is no longer chronic." He claimed that "there is no threat to human health and safety nor to the environment indicated by the now periodic exceedances of the 27 CCR standard for methane concentration in probe LFG 10-2." Mr. Bergmann concluded, "In short, the now periodic occurrences on LFG probe 10-2 of exceedance of the 27 CCR standard of 'not to exceed 5% methane' is a technical violation of the 27 CCR standard, which appears to pose no serious nor immediate risks to any of the purposes your agency [EMD] is tasked to protect."

47. On April 20, 2009, Ms. Zimmerman conducted a focused inspection at the facility. LFG monitoring at probe 10-2 was found to be in compliance with applicable regulations, with methane measured at 3.8 percent at the site boundary.

48. Mr. Bergmann wrote a letter to Patrice Webb, dated May 8, 2009, which reiterated the arguments in the March 20, 2009 letter to Ms. Zimmerman. In addition to the excessive methane readings on February 21, 22, and 23, 2009, and March 2 and 3, 2009, Mr. Bergmann attributed the excessive methane readings on February 13, 14, 15, and 16, 2009, to barometric pressure changes. He acknowledged that "there have also been two occurrences of exceedance of the 27 CCR standard (22 and 28 March 2009) that appear to have been due, at least in part, to cross-training of a Five Star employee, during a time when the employee with primary responsibility for LFG monitoring and control system operation was on vacation." The May 8, 2009 letter further stated:

A final standing recommendation for LFG control system improvement at this facility is to replace the flare system burner configuration with nozzles that are better designed for the lower methane concentrations now present in the flare inlet gas. This action is also described in our 20 March 2009 correspondence to your agency. This task remains in process, as combustion system vendors for this task have so far not been completely responsive. It's a pretty specialized application, and the vendor field is somewhat small—there are not a lot of choices.

To provide your agency some greater detail as may be required by 27 CCR 20937, our standing recommendation in this matter is to replace the existing 4-jet burner configuration in the LFG flare, which was designed for a methane inlet concentration of 20% to 50%v, and for a flow range of 50 scfm to 200 scfm, with a single jet burner configuration that is better suited for the current inlet gas BTU content and actual system flow range. We have recommended a burner designed for a methane content of 16% to 20%v (marginally combustible) and a tighter flow range of 60 scfm to 120 scfm. This modification will increase the flare system operational efficiency, as well as improve the reliability of the LFG flare system. Specifically, it should substantially improve the reliability of automated flare system re-start following the system rest cycle.

49. On May 26, 2009, Ms. Webb conducted a focused inspection at the facility. She was accompanied by Lea Gibson, a trainee at the LEA. The methane gas reading at probe 10-2 was 6.1 percent, which exceeded the 5 percent regulatory limit. After Ms. Webb returned to her office on May 26, 2009, she saw four fax cover sheets from Mr. Emslander; two were dated May 22, 2009, and two were dated May 26, 2009. One of the May 22, 2009

fax cover sheets stated: "flare not running due to mechanical electrical problem with recorder or related components." The May 26, 2009 fax cover sheets stated, "Flare not running this morning. Will advise when diagnosed"; and "Found pipe seperated [sic] at expansion joint on pipe by well #6. Repaired and flare is trying to restart at the present time."

50. According to Mr. Bergmann, the concentration of methane at the Dixon Pit Landfill has declined over time, as the landfill has aged. In order for the flare to ignite, the concentration of methane collected from the infill gas extraction wells and piped to the flare must exceed 15 percent. IGE-5 and IGE-6 were installed in February or March of 2007, along with probe sets 6, 7, 8, 9, and 10. IGE-7 and IGE-8 were proposed in October of 2007 in an attempt to address the chronic problem of excessive methane readings at probe 10-2. In the spring of 2008, Mr. Bergmann performed revised extraction yield mathematical modeling for IGE-7 and IGE-8, based on data obtained over time from the measurement of methane concentrations at IGE-5 and IGE-6. The results of the extraction yield modeling convinced Mr. Bergmann that the new wells (IGE-7 and IGE-8), if installed, would yield methane concentrations of between 8.5 percent and 10.5 percent, which would be insufficient to operate the flare, and would "dilute" the concentration of methane produced by the other infill gas extraction wells at the site. After IGE-7 and IGE-8 were installed, Mr. Bergmann brought them on-line briefly to test the methane concentration; he obtained readings of 9.8 percent to 10 percent methane, which confirmed the results of his mathematical modeling.

51. Mr. Bergmann acknowledged that the flare must be burning in order for the LFG collection and control system to extract methane gas from the landfill. While Mr. Bergmann has on multiple occasions, in e-mails, letters, and testimony, asserted his belief that improvements to the LFG collection system (i.e., the pipes) would bring probe 10-2 into compliance, he also conceded that the methane concentration at the landfill was not high enough to keep the LFG control system (i.e., the flare) operating constantly, as would be required in order to extract methane from the landfill.

52. Mr. Emslander testified that he has been unable to maintain the flare in constant operation. He testified that the flare "went down" on May 22, 2009, but was "back up" the same day. The flare "went down" again on May 25, 2009, but was re-started after 4:00 p.m. on May 26, 2009. Mr. Emslander acknowledged that the flare system requires a methane concentration in excess of 15 percent in order to ignite the flare; he "shut the flare off Sunday [May 24, 2009] so methane will build up, so it can burn." He stated that the average span of continual operation of the flare is four days; the longest period in which the flare has run continuously was nine days, and then the "methane ran out." He acknowledged that when the flare does not operate for more than four or five hours, the methane level in the system rises.

According to Mr. Emslander, a lack of methane generation by the landfill site is the primary reason for non-operation of the flare. Except for infill gas extraction wells IGE-2

and IGE-3, the infill gas extraction wells are producing methane at concentrations less than 15 percent by volume in air.

53. Gino Yekta is a Waste Management Engineer, currently employed with CIWMB in its Waste Compliance and Mitigation Program. He is responsible for the review and approval of Closure and Post Closure Maintenance Plans, Post Closure Land Use Plans, and Landfill Gas Monitoring Plans, for solid waste facilities and burn ash sites. Mr. Yekta has been present on several occasions when LEA personnel have conducted inspections at the Dixon Pit Landfill. Mr. Yekta acknowledged that the methane levels generated by the Dixon Pit Landfill may be insufficient to keep the flare currently installed at the site burning continuously. Once the flare is ignited, gas is drawn through the collection system to the flare. If the flare is not ignited, the chances greatly increase that the methane will migrate off-site. At hearing, Mr. Yekta discussed alternatives to the system currently in place at the Dixon Pit Landfill, including the use of a supplemental combustible mechanism (e.g. propane) to keep the flare burning, or the installation of a passive system that does not involve the use of a flare.

According to Mr. Yekta, the installation of infill gas extraction wells will extract landfill gasses and prevent off-site gas migration. An engineer will typically utilize mathematical modeling to determine how much gas will be extracted by various wells, in order to determine the number of wells needed to control gas migration off-site. However, based upon his experience, Mr. Yekta did not believe the installation of additional wells would prevent the flare at the Dixon Pit Landfill from functioning. According to Mr. Yekta, if continuous burning of the flare did not maintain the methane concentrations at or below the regulatory maximum of 5 percent, the next "step" would be to install additional infill gas extraction wells.

LEGAL CONCLUSIONS

1. PRC section 45000, subdivision (a), provides, in pertinent part, that the LEA "may issue an administrative order requiring the owner or operator of a solid waste facility to take corrective action as necessary to abate a nuisance, or to protect human health and safety or the environment."

2. PRC section 45011, subdivision (a), provides, in pertinent part, that if the LEA determines that a solid waste facility is in violation of applicable laws or regulations, "or poses a potential or actual threat to public health and safety or the environment, the enforcement agency may issue an order establishing a time schedule according to which the facility or site shall be brought into compliance with this division."

3. PRC section 45002 states: "An order issued pursuant to this part or Part 4 (commencing with Section 43000) shall provide the person subject to that order with a notice

of that person's right to appeal pursuant to Part 4 (commencing with Section 43000) and Part 6 (commencing with Section 45030)."

4. PRC section 44307 provides that the LEA shall hold a hearing, if requested to do so, by the person subject to an enforcement action pursuant to Part 5 (commencing with PRC section 45000). The hearing "shall be held in accordance with the procedures specified in Section 44310." PRC section 44310, subdivision (c) states, in pertinent part, that the decision issued pursuant to the procedure set forth in section 44310 "shall become effective as provided in Section 45017."

5. PRC section 45017, subdivision (a)(1), states, in pertinent part, that (except in circumstances not pertinent to this matter) "all orders and determinations issued pursuant to this part or Part 4 (commencing with Section 43000) shall take effect immediately upon service, except that a request for a hearing pursuant to Section 44307 shall stay the effect of any or all provisions of the order until the date of the completion of all administrative appeals."

6. Article 4 of Chapter 5 of Division 7 of 14 CCR pertains to the activities of the LEA in enforcement of state minimum standards, solid waste laws, and regulations. 14 CCR section 18304.2 states:

An order becomes final when either:

(a) A notice and order has been requested by the operator and/or owner to be reviewed by the local hearing panel or hearing officer, and the hearing process has been completed pursuant to PRC sections 44307 & 44310, and any subsequent appeals to the board or Superior Court have been resolved pursuant to PRC sections 45030-45042, or;

(b) Within 15 days of receipt if no review was requested by the operator.

Discussion

7. Appellants did not contest the numerous violations of 27 CCR sections 20921 and 20937 prior to September 30, 2008, that formed the basis for issuance of the Notice and Order. Nor did appellants contest the requirement at section 2.1 of the Notice and Order, Specific Actions Required (page 5), that appellants implement corrective measures to the LFG collection system necessary to abate the gas violation at probe 10-2. On the contrary, prior to the first scheduled hearing date, appellants made improvements to LFG collection system, including grading the property, and replacing various pipes and valves, to bring the collection system into conformity with Mr. Bergmann's engineered design (Findings 34, 35,

38, and 39). The improvements to the LFG collection system were completed prior to Mr. Bergmann's inspection of the facility on November 16, 2008 (Finding 34) [Issue 1].

8. Mr. Bergmann's monitoring of probe 10-2 on November 16, 2008 was the "official" weekly monitoring event, as required by the LEA (Finding 34) [Issue 2]. The fact that Mr. Bergmann obtained a measurement of 0.0 percent methane by volume in air at probe 10-2 on November 16, 2008, established that probe 10-2 was "in compliance" on that date; however, appellants did not establish compliance with the Notice and Order to have the methane gas concentration at probe 10-2 "continuously controlled" at or below the regulatory limit of 5 percent methane by volume in air, in light of the fact that the probe was out of compliance by November 26, 2008, and on numerous occasions thereafter (Findings 36, 38, 41, 42, 44, and 49) [Issue 3].

9. Appellants installed the two new infill gas extraction wells, IGE-7, and IGE-8, that were part of the approved plans for the facility, and were required to be completed pursuant to section 2 of the Notice and Order, Specific Actions Required (page 5). Both wells were installed by December 1, 2008 (Finding 37) [Issue 4].

10. The timetable for correction, as originally set forth in the Notice and Order, was reasonable and appropriate. As a result of the filing of the appeal, the effect of any or all provisions of the Notice and Order were stayed until the date of the completion of all administrative appeals. However, the fact that appellants have taken some of the corrective actions specified in the Notice and Order does not make the issuance of the Notice and Order "moot." Rather, it underscores the reasonableness of the Notice and Order as originally issued.

11. The core issue on appeal is whether the installation of infill gas extraction wells IGE-7 and IGE-8 was necessary in order to control methane gas concentration at probe 10-2 at or below the regulatory limit of 5 percent methane by volume in air. Appellants contend that they are unable to comply with the requirement of the Notice and Order to "have both wells be operational," because bringing the wells "on-line" would dilute the concentration of methane to the flare, and would be detrimental to the overall operation of the LFG control system (Finding 50). Appellants further contend that corrections to the LFG collection (pipe) and control (flare) system have brought the system into compliance with applicable regulations, and have achieved continuous control of the methane gas concentration at probe 10-2 so as not to exceed the regulatory limit (Findings 45, 46, and 48).

12. The parties were permitted to introduce evidence of methane gas readings at probe 10-2 after the corrections to the LFG collection system were completed on November 15, 2008, in order to give appellants every opportunity to show that the LFG control system, as corrected, could control methane gas at the property boundary at or below the regulatory limit of 5 percent methane by volume in air. However, methane readings at probe 10-2 continued to exceed the regulatory limit, as recently as May 26, 2009. The fact that the flare was not operational on May 26, 2009, does not excuse appellants' noncompliance with

applicable regulations. As set forth in Findings 50, 51, 52, and 53, Mr. Bergmann, Mr. Emslander, and Mr. Yekta all confirm that the methane concentration at the Dixon Pit Landfill is insufficient to maintain the constant ignition of the flare. Mr. Bergmann has been aware of this situation since at least March of 2008, yet as of the last date of hearing, appellants have not taken sufficient steps to remedy the situation. As the testimony of Mr. Yekta established, the addition of IFG-7 and IFG-8 will extract additional methane from the landfill. Appellants must take all necessary steps (i.e. implement corrective measures to the system) to insure that the methane gas concentration at probe 10-2 and all other perimeter probes is continuously controlled at or below the regulatory limit of 5 percent methane by volume in air [Issue 5].

Reasonableness of the Notice and Order

13. Appellants objected to the "compliance date" of "immediately and continuously" for the requirement at section 1 of the Notice and Order, Specific Actions Required (page 5), that "the methane gas concentration at probe 10-2 and all other perimeter probes must be continuously controlled so as not to exceed the regulatory limit of 5%." Appellants contend that a compliance date of "immediately and continuously" does not constitute a "time schedule according to which the facility or site shall be brought into compliance" within the meaning of PRC section 45011. This contention is totally without merit. Appellants are required by statute and regulation to maintain the landfill in such a manner that the methane gas concentration migrating from the disposal site must not exceed 5 percent by volume of air.

Other Matters

14. In subsection III.C. of Appellant's Closing Brief, Super Pallet objected to the "Additional Actions to be Taken," sections 1.0 through 1.5 (page 6), and section 2 through 2.3 (page 7), on the grounds that they "are beyond the scope of a Notice and Order or have already been implemented and are moot." These matters were not previously raised as issues on appeal; they are beyond the scope of these proceedings, and are not further addressed herein.

Conclusion

15. PRC sections 45000 and 45011 authorizes the County EMD to issue a Notice and Order to require appellants, who are in violation of applicable statutes and regulations, to take corrective action and abate the potential and actual threat to public health and safety and the environment. (Findings 1 and 2, and Legal Conclusions 1 and 2.)

16. Pursuant to PRC sections 45000, subdivision (a), and 45011, subdivision (a), cause exists to issue the Notice and Order, dated September 30, 2008, in that appellants repeatedly failed to control methane gas at the property boundary of Dixon Pit Landfill at or below the regulatory limit of 5 percent methane by volume of air, and appellants violated the requirements of 27 CCR sections 20921 and 20937, by reason of Findings 14, 15, 17, 21, 23, 24, 25, and 28.

17. Pursuant to PRC sections 45000, subdivision (a), and 45011, subdivision (a), cause exists to require appellants to take the corrective actions specified in the Notice and Order, dated September 30, 2008, for violation of 27 CCR sections 20921 and 20937, by reason of the Factual Findings and Legal Conclusions, taken as a whole.

18. All arguments of the parties not specifically addressed herein were considered and are rejected.

ORDER

The appeal of Super Pallet Recycling Corp., and Five Star Auto and Towing, Inc. from the Notice and Order issued on September 30, 2008 in regard to Dixon Pit Landfill, SWFP No. 34-AA-0007, APN 127-0010-062-000, is denied, and the Notice and Order is upheld. Five Star and Super Pallet are jointly responsible for compliance with the Notice and Order.

Dated: July 24, 2009

CATHERINE B. FRINK
Administrative Law Judge

Office of Administrative Hearings
NOTICE OF RIGHT TO APPEAL

Pursuant to Division 30 of the Public Resources Code, you are hereby notified of your right to appeal the Decision issued in this matter, as follows:

§ 45002. Notice of right to appeal required with issuance of order

An order issued pursuant to this part or Part 4 (commencing with Section 43000) shall provide the person subject to that order with a notice of that person's right to appeal pursuant to Part 4 (commencing with Section 43000) and Part 6 (commencing with Section 45030).

§ 45030. Appeals; Time limitations; Requirements to commence; Applicable procedures

(a) A party to a hearing held pursuant to Chapter 4 (commencing with Section 44300) of Part 4 may appeal to the board to review the written decision of the hearing panel or hearing officer or to review the petitioner's request in the instance of a failure of a hearing panel or hearing officer to render a decision or consider the request for review, or a determination by the governing body not to direct the hearing panel or hearing officer to hold a public hearing, under the following circumstances:

(1) Within 10 days from the date of issuance of a written decision by a hearing panel or hearing officer.

(2) If no decision is issued, within 45 days from the date a request for a hearing was received by the enforcement agency for which there was a failure of a hearing panel or hearing officer to render a decision or consider a petitioner's request pursuant to Section 44310.

(b) An appellant shall commence an appeal to the board by filing a written request for a hearing together with a brief summary statement of the legal and factual basis for the appeal.

(c) Within five days from the date the board receives the request for a hearing, the board shall schedule a hearing on the appeal and notify the appellant and all other parties to the underlying proceeding of the date of the board hearing.

(d) The board shall hear the appeal within 60 days from the date the board received the request for the appeal.

(e) The board shall conduct the hearing on the appeal in accordance with the

procedures specified in Article 10 (commencing with Section 11445.10) of Chapter 4.5 of Part 1 of the Government Code.

If you choose to appeal this Decision, you must file a request for hearing, together with a brief summary statement of the legal and factual basis for the appeal, no later than 10 days from the date of issuance of the written decision from the hearing officer. The request for hearing must be filed with the California Integrated Waste Management Board, 1001 I Street, P.O. Box 2815, Sacramento, CA 95812-2815.

If you fail to request a hearing within the required time, the Decision will become final and enforceable